

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No.96-45
Universal Service)	

PETITION FOR WAIVER

Comes the Kentucky Department of Education, by counsel, on behalf of the Department and all 176 common school districts in the Commonwealth of Kentucky to petition the Federal Communications Commission (FCC) for a waiver of 47 CFR 54.505, Universal Service Support for Schools and Libraries, Discounts. The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (Act) provides discount rates on designated telecommunications services for eligible schools and libraries. Specifically, Section 254(h)(1)(B) provides that the discount shall be an amount that the FCC, with respect to interstate services, and the states, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities.

On May 8, 1997, the FCC issued its Report and Order, CC Docket 96-45, Order No. 97-157 (Order) implementing the key portions of section 254 of the Act and addressing universal service. The Order identifies interstate and intrastate services to be discounted, sets forth the discount levels for interstate services and states that the funding will begin January, 1998. Schools and

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libraries must file applications to be eligible for discounts. (On June 17, 1997, the Kentucky Public Service Commission issued an Order adopting the discount matrix contained in FCC Order No. 97-157, CC Docket 96-45 for purposes of permitting schools and libraries to receive federal funding.)

In the FCC Order, the commission concluded that each eligible school district may apply individually for telecommunications services or each may aggregate the individual demand with that of other eligible districts or libraries "to create a consortium with sufficient demand to attract competitors and negotiate lower rates" Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd at 9051, para. 476. Moreover, each eligible school district and library may apply for discounted services or a state, or group of schools or libraries may apply by computing an average discount based on the number of students eligible for the school lunch program, divided by the total number of students in the school district or state. Id., at Par. 523. This state-wide level of poverty calculation is the basis of the level of discount found in the discount matrix. In either case, "the state or district shall strive to insure that each school receives the full benefit of the discount to which it is entitled." Id.

The FCC has authority to waive any part of the rules on its own motion or on petition if there is good cause shown. 47 C.F.R. Sec. 1.3 (1996).

Kentucky law presents special circumstances that warrant a deviation from the general rule governing discounts for Universal Service Support for schools. A waiver serves the public interest by assuring equity in providing

federal universal service support for eligible schools in Kentucky. For reasons of equity and efficiency, Kentucky wishes to aggregate the discount at the state level and apply that rate to all schools using the average weighted discount rate for the state.

Section 183 of the Kentucky Constitution mandates an efficient system of public schools. In 1989, the Kentucky Supreme Court declared the entire system of education in Kentucky unconstitutional, and interpreted Section 183 to require a substantially uniform system of public schools throughout the state with adequate funding, and with every child having an equal opportunity to obtain an adequate education. Rose v. Council for Better Education, Inc., Ky. 790 S.W.2d 186 (1989).

In 1990, through the enactment of House Bill 940, the General Assembly established a new system of education to address disparities, completely revising the areas of governance, curriculum and finance. New goals, among others, included, "sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization. Rose, 212.

Toward that goal, the General Assembly provided legislative authority and funding for substantial investment in the area of education technology and established a Council for Education Technology (Council) to develop a master plan. KRS 156.666. Initially approved by the Kentucky Board of Education (State Board) and the Legislative Research Commission, the responsibility for updating the plan is that of the Council and the State Board. KRS 156.670. The State Board sets standards for school districts in the areas of

acquisition and use of education equipment, consistent with the recommendations of the Council. KRS 156.160.

The Master Plan also "establish(es) and implement(s) a uniform and integrated system of standards and guidelines for financial accounting and reporting, which shall be used by all school districts." KRS 156.670(3). Through the integrated technology-based communications system, districts are to provide "comprehensive, current, accurate, and accessible information relating to management, finance, operation, instruction and pupil programs . . . under the jurisdiction of the Department of Education." KRS 156.670(4). The Chief State School Officer certifies this data to support administration of the fund to Support Education Excellence in Kentucky (SEEK) which provides funding to support the public school system in accordance with KRS 157.330. The guaranteed base funding level for each district is computed and based on the prior year's average daily attendance (KRS 157.360(1)), which is calculated and based on data collected within the school and accumulated at the district level. To support the funding process, the Board of Education has established standards for administrative and instructional systems at the district and school level, including, but not limited to, uniform codes, processes, and software systems, as well as standards for acquisition of hardware, software, and networking. These standards are set forth in the Master plan for Education Technology and incorporated by reference into the Kentucky Administrative Regulations. 701 KAR 5:110.

To participate in the Education Technology funding program, a local public school district must have an unmet technology need described in the district technology plan, approved by the State Board. KRS 157.655(1).

Through the legislation and funding, low income and high income districts in Kentucky have equal access to technology funds and equal buying power for every dollar. Four years into the Master Plan implementation, the difference between computer work station ratios in the 15 highest income districts and 15 lowest income districts is approaching zero. Every Kentucky school has access to the same discounted telecommunication line rates, which are fixed, flat cost, and neither mileage nor usage sensitive. Every Kentucky school pays the same price for goods and services, regardless of quantity or the school's geographic location through the utilization of volume state price contracts.

The KETS design is integrated from the state level to the student and teacher desktop. Every Kentucky school district has an approved technology plan in place which describes how the district will implement the objectives of the Master Plan, and each district's progress is measured against the same standards. Every Kentucky district must submit and secure approval of an updated plan annually to receive state technology funding. District procurements and implementation are monitored throughout the year to assure compliance with the plan.

Kentucky district technology planning is unique in nature. Every district participates. Funding is dependent upon planning; implementation is monitored against the plan, and districts are fully accountable. The Kentucky Education

Technology System planning process is an ongoing successful collaboration between the state and local level focused on deploying technology in ways that will increase student achievement and school success in an equitable and consistent manner

The Kentucky Department of Education respectfully submits that all Kentucky public schools should receive the same discount which should be determined by the percent of total students enrolled in Kentucky public schools that are eligible for participation in the National school lunch program. The Order permits an average discount as long as the "state . . . shall strive to ensure that each school receives the full benefit of the discount to which it is entitled."

Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd at 9051, para. 523.

The implementation of the KETS program as an integral part of education reform has ensured that all Kentucky schools are on equal footing in the funding and procurement of technology, including all networking services to the classroom. This is achieved by specifically defining the technology architecture and standards for ensuring equity of access to technology for every student and teacher, requiring each district to plan and implement technology under these regulations, allocating funds to each district on a per student basis and requiring procurement from statewide pricing, through volume bid contracts on all approved technology components.

The Order of the FCC of May 5, 1997, authorizes aggregation of eligible schools at paragraphs 467, and 523. At present, eligibility under the National

School Lunch Program places Kentucky at approximately 58 % when based on participation of students in the program.

Currently, our school districts are relatively uniform in their level of implementation of education technology, because the state has provided safeguards in every aspect of the program to ensure equity and to prevent inequities where possible. Funding provided by the General Assembly since 1990 has enabled all of our districts to move forward at a relatively uniform rate in acquiring the necessary educational technology services and equipment. Therefore, it would be appropriate for any discount to be uniform as applied to all of our school districts. It would be inappropriate to impose varying discounts which could disrupt progress toward equity already made.

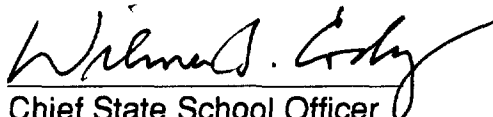
We note in addition that under the Kentucky Wage and Hour laws, a prevailing wage is required for construction projects exceeding \$250,000 dollars. KRS 337.010(3)(a), KRS 337.505-550. The rate is set by the Commissioner of Labor who applies either a federal rate, a state rate, or a rate based on senatorial districts. KRS 337.010(3)(c). In view of the fact that the state prevailing market rate that school districts pay for major projects is set by statute on an aggregate basis, it would be appropriate to address discounts also on an aggregate basis.

Finally, in determining the amount of funding available for each district to "support education excellence in Kentucky," the Master Technology Plan provides that each district is eligible for funding based on their degree of unmet need. To the extent that one district has greater unmet needs than another,

disparities are already equalized by the Department of Education. Therefore, there is an additional mechanism to provide for equalization should the aggregate discount not take care of unmet needs of individual districts. The Kentucky Department of Education respectfully maintains that the Kentucky Education Reform Act has designed and implemented a system to ensure equitable funding of education technology consistent with the language and intent of the Order issued on May 8, 1997.

WHEREFORE, the Kentucky Department of Education requests a waiver under 47 C.F.R. Sec. 1.3 (1996) of the requirement to apply the discounting matrix to individual schools and libraries in the state in order that the state aggregate discount rate may be used.

Respectfully submitted this 28th day of May, 1998.


Chief State School Officer
Commonwealth of Kentucky



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PUBLIC SERVICE COMMISSION
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May 7, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

RE: Kentucky Department of Education
Petition for Waiver
CC Docket 96-45
AAD/USB File No. _____

Dear Ms. Salas:

The Public Service Commission supports the Kentucky Department of Education's request for a waiver from the Federal Communications Commission rules related to the allocation of universal service funds received for schools in Kentucky. Under the FCC's rules, when a funding request is aggregated, the requesting organization is to compute a weighted average of the discounts for which the constituent schools are eligible. After that, "[e]ach eligible school, school district, library or library consortia will be credited with the discount to which it is entitled." 47 U.S.C. Section 54.505(b). Entitlement to discounts is based on a matrix that takes into account how disadvantaged the school is (based on eligibility for the school lunch program) and whether the school is urban or rural. 47 U.S.C. Section 54.505(c).

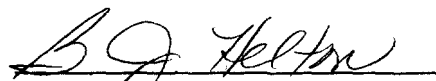
Matters particular to our Commonwealth necessitate this waiver. Kentucky's legislative body, the General Assembly, designed a system of education to address disparities in funding with a strong investment in education technology. The Act responded to a state supreme court directive. Rose v. Council for Better Education, Inc., Ky., 790 S.W.2d 186 (1989). Funding for school districts is now computed and based on the prior year's average daily attendance. KRS 157.360(1). This funding is, therefore, calculated on a per-student basis, with increased funding available for certain students with special needs. The Kentucky Education Reform Act enacted in 1990 established, inter alia, the Council for Education Technology that developed a master plan for education technology to be implemented and updated by the Council and the Kentucky Board of Education. KRS 156.666 and KRS 156.670.


Magalie Roman Salas
May 7, 1998
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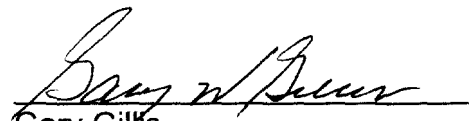
In accordance with that plan, the Kentucky Board of Education has established standards for educational technology systems at the district and school level, and requires that districts acquire only those technologies that meet the Kentucky Education Technology Standards ("KETS"). Therefore, low-income and high-income districts in Kentucky have equal access to technology funds and equal buying power for every dollar.

We believe the Kentucky Department of Education should receive a waiver from the FCC's rules with respect to the allocation of universal funding for schools in Kentucky. Kentucky's funding mechanism is consistent with the type of school funding contemplated in the FCC's rule, and provides the FCC with good cause to grant this waiver. 47 C.F.R. Section 1.3. Discounts should be approved at a uniform rate based on a statewide weighted average to protect the equity already achieved consistent with our state's adjudicated method of school financing. Granting the Kentucky Department of Education's waiver will advance the goal of universal service for Kentucky.

Sincerely,


B. J. Helton
Chairman


Ed Holmes
Vice Chairman


Gary Gillis
Commissioner